

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

**WESTROCK SERVICES, INC.**

**and**

**CASE 10-CA-195617**

**GRAPHIC COMMUNICATIONS CONFERENCE  
OF THE INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 197-M**

*Kami Kimber and Matthew J. Turner, Esqs.*, for the  
General Counsel.

*John J. Coleman III, Meryl Cowan, and Marcel L. Debruge,  
Esqs. (Burr & Forman, LLP)*, for the Respondent.

*Peter J. Leff, Esq. (Mooney Green, Saindon, Murphy & Welch, P.C.)*,  
for the Charging Party.

*Thomas W. Scroggins, Esq. (Rosen Harwood, P.A.)*,  
for the Intervenor.

**DECISION**

**STATEMENT OF THE CASE**

**ROBERT A. RINGLER, Administrative Law Judge.** This case was heard in Chattanooga, Tennessee over several days in November 2017 and January 2018. The complaint alleged that Westrock Services, Inc. (Westrock or the Respondent) violated the National Labor Relations Act (the Act) by making several unlawful statements to its workforce, and improperly promoting a campaign to decertify the Graphic Communications Conference of the International Brotherhood of Teamsters, Local 197-M (the Union). On the entire record, including my observation of the witnesses' demeanors and consideration of the parties' post-hearing briefs, I make the following

**FINDINGS OF FACT<sup>1</sup>**

**I. JURISDICTION**

At all material times, Westrock, a corporation with a printing plant in Chattanooga,

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<sup>1</sup> Unless otherwise stated, factual findings arise from joint exhibits, stipulations, and undisputed evidence.

Tennessee, has produced packaging and marketing materials. Annually, it sells and ships from this plant goods worth more than \$50,000 directly to out-of-state destinations. It, thus, admits, and I find, that it is an employer engaged in commerce, within the meaning of Section 2(2), (6), and (7) of the Act. It also admits, and I find, that the Union is a Section 2(5) labor organization.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *Introduction*

The Chattanooga plant is a large-format printing operation, which employs workers on these shifts: first (7a.m.–3p.m.); second (3p.m.–11p.m.); and third (11p.m.–7a.m.). The Union represents the following appropriate unit of employees at the Chattanooga plant (the Unit):

All lithograph pressmen and apprentices, assistants, ink and print material coordinators, silk screen employees, shipping and maintenance workers, finishing department employees, fulfillment workers, material handlers, and janitors, but, excluding supervisors, clerks, office employees, artists, and new employees with less than 60 days of service.

The parties' latest contract ran from October 3, 2013 to October 6, 2016 (the 2013–2016 CBA).<sup>2</sup>

On March 24, 2017,<sup>3</sup> an RD petition to decertify the Union was filed by employee Joe Pike. (R. Exh. 54). It was, thereafter, dismissed under the Board's blocking charge policy on the basis of the charges at issue herein.

### B. *No-Solicitation Policy and its Application*

The complaint alleged that Westrock disparately applied its no-solicitation rule, in order to encourage Unit employees to decertify the Union. The rule at issue provided, *inter alia*, that:

Employees are not permitted to solicit other employees, ... or to distribute ... non-business ... items ... during the working time of any of the employees involved. Working time ... excludes approved meal and break periods.

Employees are not permitted to distribute ... non-business ... items in working areas .... includ[ing] offices, conference rooms and the plant floor but exclud[ing] break rooms and parking lots....

<sup>2</sup> Judicial notice of these undisputed collective-bargaining facts has been taken from the Board's proceedings in Case 10–RD–195447. See *Bud Antle, Inc.*, 359 NLRB 1257 (2103).

<sup>3</sup> All dates refer to 2017, unless otherwise stated.

When an employee becomes aware of any solicitation or distribution contrary to this policy, the employee should report it immediately to a supervisor or manager.

Failure to comply with this policy may result in disciplinary action, up to and including termination of employment, depending on the circumstances.

This policy does not apply to ... documents generated by the Company....

(GC Exh. 2).

### **1. Pike's Pro-Decertification Solicitations**

Employee Leah Johnson testified that she repeatedly observed employees Pike and Tucker soliciting other employees to support decertification during working hours and in work areas. Employee Brown testified that he saw Pike and Tucker handing out fliers to incoming third-shift employees during their assigned second-shift hours. (Tr. 167). Employee Ford testified that, in February, she saw Pike standing in the warehouse during his assigned second shift hours distributing anti-Union flyers. (Tr. 234-36). She said that she saw this occur twice. (Tr. 260). Employee Bearden stated that Pike approached him in February, and asked him to sign a decertification card during his assigned shift. He said that he talked to Pike for 10 minutes regarding decertification, before he continued his shift. He said that Pike approached him again on three other dates during his shift to urge him to sign a decertification card.

Pike testified that he shuts his press down about 30 minutes before his second shift job ends, and begins his clean up procedure. He stated that, after cleanup, he often performed decertification activities at the plant, even when cleanup went quickly and he had 15 or 20 minutes remaining on his shift. (Tr. 529). He openly admitted that he consequently solicited employees to support decertification both during his shift and thereafter. See, e.g. (tr. 576). He added that he often passed out decertification materials during his shift, as he journeyed around the plant for job-related tasks. He insisted, however, that passing out decertification materials never interfered with his job. (Tr. 543-44). He confirmed that neither Reed nor any other supervisors told him to stop soliciting for decertification. (Tr. 576, 589-90). He said that he never directly told Reed that he was soliciting during working hours and in work areas, but, openly agreed that everyone at the plant knew about his conspicuous activities. (Tr. 585). He stated that he also worked on the first shift at his own discretion, in order to solicit on that shift.

Reed admitted that he knew that Pike was soliciting before his shift ended, but, averred that it was acceptable because his job had been completed for the day. (Tr. 607). He then very contradictorily said that, with the exception of White's email (GC Exh. 3), he was

unaware that Pike was soliciting during working hours and in work areas. (Tr. 649).<sup>4</sup>

## 2. Regulation of Pro-Union Solicitation

### 5 a. GC's Case

Employee Johnson testified that, while employees can freely chat at their workstations about non-Union topics, they are generally prohibited from discussing any Union affairs during work hours, with the narrow exception of soliciting coworkers to decertify the Union.<sup>5</sup> 10 She offered two examples of supervisor White curtailing her own Union discussions with employees during work hours and telling them to reconvene during a break time.<sup>6</sup> (Tr. 32–33). Employee Walker corroborated Johnson's account, and confirmed that he has repeatedly observed employees being told to only talk about Union matters (i.e., other than advocating decertification) during breaks. (Tr. 111–13). Employee Brown agreed that employees cannot 15 discuss Union matters, beyond advocating decertification, during working time; he recalled supervisor Adam Cartwright applying the no-solicitation rule in this manner.<sup>7</sup> (Tr. 165–67).

### b. Westrock's Reply

20 Employee Patricia Steinaway testified that workplace talk is unmonitored. She recalled stewards passing out Union materials during work hours. Employee Jeremiah Lawrence corroborated Steinaway. Pike stated that there was no limitation on employee discussions, as long as their machines were operating. (Tr. 547–48). He stated that he 25 witnessed employees discussing pro-Union matters during working hours. Reed denied disparately enforcing the no-solicitation policy, and denied disciplining anyone for having Union discussions. He insisted that employees can talk freely, as long as their work was being performed.

## 30 3. February 17 Email to Plant Manager Reed Regarding Solicitation<sup>8</sup>

On this date, supervisor White emailed plant manager Randy Reed and told him that employee Pike had violated the plant's no-solicitation policy by, "standing outside handing out forms to sign about the union ... [while] on the clock." (GC Exh. 3). Employee Leah Johnson corroborated that, on February 17, she and several employees witnessed Pike, a 35 second-shift worker, loiter outside the plant entrance and solicit decertification signatures from incoming third-shift employees during his assigned shift.<sup>9</sup> (Tr. 37–38).

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<sup>4</sup> This denial was not credited, and will be discussed at significant length below.

<sup>5</sup> Johnson is a shop steward.

<sup>6</sup> White did not testify; Johnson's testimony on this uncontested point has, thus, been credited.

<sup>7</sup> Cartwright did not testify regarding this matter; testimony on this non-contested point has, thus, been credited.

<sup>8</sup> The facts contained in this paragraph were not rebutted.

<sup>9</sup> There was no evidence presented showing that Pike was disciplined for this transgression, or told to stop.

#### 4. March 2 Meeting – Exchange with Reed Regarding No-Solicitation Violations

On this date, Reed made a scripted presentation to employees regarding decertification. (GC Exh. 4). Johnson recalled having this exchange with Reed:

During the presentation because they told us that it was legal for Joe [Pike] to solicit on company time, I asked again. So it is legal for someone to solicit signatures to decertify our union on company time; and Randy said yes. I said, but you also said that ... the Company can't have any involvement with this. Randy said, correct. I said, but if the supervisor is allowing Joe, on company time, to leave his work area to come over to our work area knowing that he's coming over there to solicit for the decertification isn't that the same thing as the Company having involvement .... His response to me was, Leah, we're not talking about a 20 minute conversation here, we're talking about a five minute conversation, and we don't limit employees conversations with one another here.

(Tr. 46-47). Employees Brown and Ford corroborated Johnson's account. (Tr. 170, 240-41).

#### 5. Solicitation Favoring Decertification Involving Reed and Brooks

David Brooks, an employee from Westrock's Conway plant, and his Conway coworker Earl Johnson, made several presentations to the Chattanooga plant workers concerning their successful decertification experience at the Conway plant. Brooks testified that, in addition to speaking during group meetings between April 2 and 6, they were escorted around the plant by Reed to solicit and answer individualized decertification queries. These solicitations occurred during working time in work areas. (Tr. 408-409). Brooks recounted that:

Randy ... walk[ed] us through the plant and ... introduced us to a lot of the people ... on the machines. [He said,] hi this is David and Earl from Conway ... do you have any questions, [and] everybody ... stopped, [and we] talked to them.

(Tr. 408).

#### 6. Credibility Analysis and Findings on Disputed Matters

Given the conflicting solicitation accounts, a credibility analysis must be made. On behalf of Westrock, Reed denied disparately enforcing the solicitation rule and stated that workplace talk is wholly unrestricted. Employees Steinaway, Lawrence and Pike also averred that workplace discussions are unrestricted. Reed insisted that he thought that Pike solicited for decertification only once during working hours and/or in working areas. On the other hand, several General Counsel (the GC) witnesses stated that: Westrock disparately enforced the no-solicitation rule by allowing pro-decertification solicitation, while barring favorable

Union solicitation; and Reed was repeatedly notified about Pike's solicitation and took no action. For several reasons, the GC's witnesses have been credited.

Reed's denials regarding disparate enforcement of the no-solicitation rule have not been credited. The record reveals that Westrock disparately enforced its no-solicitation rule. **First**, pro-decertification employees Pike, Tucker, Earl Johnson and David Brooks repeatedly violated two aspects of the no-solicitation rule by soliciting during "working time" and in "working areas." (GC Exh. 3). Pike admitted that he repeatedly solicited during "working time" in "working areas." Conway employees Johnson and Brooks also acknowledged that they solicited employees about their positive decertification experience during "working time" in "working areas" at group meetings, and were even personally escorted around the Chattanooga plant by Reed to further solicit during "working time" in "working areas." **Second**, Westrock knew that pro-decertification employees were repeatedly violating the no-solicitation rule, and took no responsive action. Reed knowingly helped pro-decertification employees to breach the no-solicitation rule, when he escorted Johnson and Brooks around the plant to solicit employees during "working hours" in "working areas." Reed also ignored supervisor White's email about Pike's solicitation and Leah Johnson's oral notification during the March meeting.<sup>10</sup> Lastly, Pike deeply undercut Reed's denial of knowledge, when he conceded that *everyone, including Westrock management*, knew about his open, notorious and repeated breaches of the no-solicitation rule. **Third**, Westrock did not afford pro-Union employees who were against decertification the same right to violate the no-solicitation rule. There is no evidence that Union supporters were ever *knowingly* allowed by management to solicit during "working time" or in "working areas."<sup>11</sup> There is similarly no evidence that Union supporters were allowed to end their shifts early and solicit during their remaining "working hours," as Pike did. There is also no evidence that Union supporters were granted the unfettered right to solicit in "working areas," as Pike, Tucker, Johnson and Brooks did. Moreover, there is also highly credible evidence that Westrock curtailed pro-Union solicitation (i.e., anything except pro-decertification solicitation) in violation of the rule, whenever it was made aware of such conduct.<sup>12</sup> **Finally**, Reed was a less than credible witness, who appeared to be more committed to supporting Westrock's interests than offering a candid account of the relevant events. He was repeatedly led on key matters by Westrock's counsel, which further undercut his testimony. He was also contradicted by Pike regarding his solicitation knowledge. He also contradicted himself by first saying that he knew that Pike had repeatedly breached the no-solicitation rule but that it was acceptable because he had completed his day's work (tr. 607), and then inconsistently stated that, with the exception of White's email (see (GC Exh. 3)), he was wholly unaware of Pike's solicitation breaches. (Tr. 649). This significant flip-flop on a seminal issue greatly undermined his credibility. In sum,

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<sup>10</sup> Johnson's testimony on these points was credited; she had a stellar demeanor, was corroborated by other employees witnesses, and Reed never directly denied their exchange at the March meeting.

<sup>11</sup> Although there was some employee testimony that Union supporters solicited during "working hours" in "work areas," there is no record evidence that management knew about their actions, as was the case with Pike.

<sup>12</sup> As noted above, there was credible and unrebutted testimony from several employees that supervisors White, Cartwright and others knowingly banned pro-Union solicitations in "working areas" during "working time."

Reed's denial that he disparately enforced the no-solicitation rule and lacked knowledge was unavailing.

**C. March 1 – Exchange Between Reed and Jamie Ford**

Employee Ford testified that, after her supervisor asked Reed about giving her a raise, he replied that, "there's nothing [that] he can do ... until the contract goes through or the Union is out." (Tr. 239). Reed related that he solely said that he could not offer a raise not set forth in the 2013-16 CBA. For several reasons, I credit Ford, who was a consistent witness, with a solid demeanor and strong recall. Reed was, as noted, less than credible.

**D. March 6 – Supervisor Sheila Smith's Exchange with Employee Taylor Walker**

**1. GC's Case**

Walker recalled signing the petition to decertify the Union in early March. He testified that, shortly thereafter, Smith approached him, and they had this exchange:

She asked me to get one of the cards that they had been having people sign, and to take it over ... to ... Lawrence and Ryan Murray.... She told me ... she would do her best to convince them to sign.... They're trimmer operators ....

(Tr. 115-16). He said that he understood "they" to mean Pike and Tucker, who had been leading the decertification campaign. (Tr. 116). He stated that he later reported the incident to Union steward Steve Brown, who corroborated his report. (Tr. 167).

**2. Westrock's Reply**

Employee Lawrence denied asking Smith, who is also his aunt, to obtain a decertification card on his behalf. Smith denied playing any role in the decertification campaign; she said that she knows Walker, but, denied asking him to retrieve any decertification materials.

**3. Credibility Analysis**

For several reasons, Walker has been credited over Smith. He was a consistent witness with a strong recollection and solid demeanor.<sup>13</sup> He was universally cooperative on direct and cross. He was corroborated by Brown, another credible witness with a strong demeanor, who indicated that Walker reported Smith's actions shortly after incident. Lawrence's testimony has been afforded little weight, inasmuch as Smith could have still asked Walker for decertification materials, irrespective of whether he asked her to do so, and

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<sup>13</sup> His credibility was enhanced by the fact that, even though he clearly supported decertification by signing a card, his testimony cut against his own interest in promoting decertification. His obvious willingness to testify against his own interest in this key workplace matter enhanced his overall credibility.

it remains plausible that his account was colored by his close family relationship with Smith. Smith was a somewhat poor witness, who was repeatedly asked leading queries by counsel on key matters.

5                                ***E.        March 24 (RD Petition filing) and March 27 Meeting***

On March 24, Pike filed the RD petition. On March 27, Reed read this script to the Unit:

10                    We ... encourage you to vote “NO” to the Teamsters ....

[I]t really bothers me to see that .... our non-union plants ... are paid better than union plants .... I want to see you get out [of] ... the union contract .... I think you deserve the chance to see what you can accomplish [with] ... no union ....

15                    When the vote is over, ... , we will focus on our future .... We will ask for your input .... We'll treat you fairly regarding wages and benefits ....

20                    You can vote to keep things just the way they are, or you can vote to give all of us the chance to make things much better .... I am asking you to vote no ....

(GC Exh. 5). Unlike other decertification presentations, this script neglected to say that Westrock was not promising improved wages and benefits.<sup>14</sup>

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***F.        March 27 Exchange Between Frost and Reed***

**1.        GC's Case**

30                    Employee Frost testified that, in December 2016, Pike offered him a decertification card, which he thereafter stored in his toolbox unsigned. He stated that, on March 27, Reed and Bill Bearden from quality control visited his work area. He recollected Reed telling Bearden how much money his son, Brady, had saved in his 401K account at Westrock's non-union plant. He said that he then tendered a signed decertification card to Reed, who accepted

35                    it and, based upon his assumption, delivered it to Pike. (Tr. 143-44). He said that Reed did not ask him what the signed decertification card was, or question what he should do with it, and that he never instructed Reed to deliver it to Pike. (Tr. 158). He added that Reed never told him that he was traveling over to Pike's work area. (Tr. 157).

40                                **2.        Westrock's Stance**

Reed denied knowingly accepting a decertification card from Frost. He said that it is not uncommon for employees to ask him to deliver things to other areas of the plant.

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<sup>14</sup> Cf. (GC Exh. 6) (repeatedly stating that Westrock was not promising improved wages and benefits).



### 3. Credibility Resolution

Reed's denial regarding knowledge is unpersuasive; he knew that Frost gave him a signed decertification card for delivery to Pike. As a threshold matter, it is undisputed that Reed accepted a signed decertification card from Frost.<sup>15</sup> Regarding his denial of knowledge regarding the contents of the document, it is implausible that he would have known what to do with the card or where to deliver it to, if he lacked such knowledge. It is also implausible that, as a plant manager, he blindly accepts items from rank and file employees for delivery, without questioning employees about the contents of such documents.<sup>16</sup> It is also plausible that Reed knew what the card was, given his several earlier conversations with Frost about decertification. Finally, as noted, Reed was a less than credible witness, whose denial carries little weight.

#### G. *March 27 Exchange Between Employee Bearden and Reed*

William Bearden also recalled speaking to Reed at his work station after the March 27 meeting. He said that Reed similarly told him about the 401K plan at Westrock's non-union Kimball plant, and bragged that his son had accumulated \$19,000 in his account over a short time. Reed did not contest this testimony, which has been credited.

#### H. *April Meetings – Conway Plant Employees Earl Johnson and David Brooks*

Between April 2 and 6, Conway plant employees Earl Johnson and David Brooks made five presentations at the Chattanooga plant to workers at group meetings concerning their positive decertification experience at their own plant.<sup>17</sup> These meetings were arranged and scheduled by Westrock. They met with Westrock's labor relations counsel before their first meeting, and were told not to make promises. Reed introduced them at the group meetings and departed, before they spoke. They were also escorted around the plant by Reed, who introduced them to employees and allowed individualized decertification discussions.

### 1. GC Witnesses

Employee Leah Johnson attended the April 4 meeting held by Johnson and Brooks. She said that Reed introduced them as Conway plant workers, who wanted to share their positive decertification experiences. She recalled Earl Johnson, a former steward, stating that, although he was initially worried that he might be fired after decertification, Westrock retained him, without issue. She testified that he also said that:

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<sup>15</sup> This portion of Frost's testimony was un rebutted.

<sup>16</sup> Given that Frost offered un rebutted testimony that he never told Reed what the card was or who to deliver it to, it follows that Reed must have either looked at it or otherwise became aware its contents, in order to successfully deliver it to Pike. It is noteworthy that he did not contend that he did not deliver the card to Pike, or discarded it.

<sup>17</sup> These sessions ran from 1 to 1.5 hours in length.

[T]here was a \$2 an hour pay increase across the board at their plant once the Union was decertified.... [and] an increase in their 401(k) match ....

5 (Tr. 56). She noted that Brooks and Johnson collectively stated that:

[T]he Company cannot make promises .... [B]ut Earl [said] ... that *if we just listen closely* because ... someone from corporate would ... talk with us. They said [that] when Norcross comes in they can't promise you anything.... [I]t's  
10 illegal ..., but if you'll listen close[ly], ... you'll *read between the lines* ... *what they ... [will] offer*, but legally ... cannot ... tell you .....

(Tr. 57) (emphasis added).<sup>18</sup> On the same date, Leah Johnson emailed Union representative Michael Huggins about the meeting, and memorialized that employees were told that, after  
15 decertification, “ALL employees got a \$2/hour raise and their 401K match rose from 1% to 6%.” (R. Exh. 62).

Employee Jamie Ford attended a similar meeting; she recalled this exchange:

Dave [Brooks] started talking, and [said that] ... he didn't believe in unions .... He said [that] ... at his plant, ... there was no need for a union. .... He [said that he] thinks it was ... better ... for the Union to be gone .... Dave and Earl both told us to ... *pay ... attention* when ... meet[ing with] ... Norcross, [and] just to listen ... and be open-minded ... [and] *wait until we see the benefits package ... they offer to plants that don't have unions*.  
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(Tr. 243-47) (emphasis added).

## 2. Westrock's Stance

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Westrock made two arguments regarding Johnson and Brooks. It averred that they were not agents, who spoke for the company. It also provided a conflicting account of the meetings.

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### a. Agency Issue

Earl Johnson denied being an agent. He described being recruited to speak for Westrock:

I was approached by the HR lady and my plant manager .... [T]hey asked [if we], would ... volunteer to ... speak [about] ... what happened to us during ... the Union [decertification election] and ... tell ... [our] side of the story.  
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<sup>18</sup> The term “Norcross” refers to Westrock’s corporate HR representatives from Norcross, Georgia.

(Tr. 323). He said that he and Brooks previously made similar decertification presentations at Westrock's Chicago and Fargo plants, where both unions were eventually decertified. Westrock paid all travel, lodging and expenses associated with their speaking engagements, and they received 60 hours of pay to speak at the Chattanooga plant. (GC Exh. 9).

**b. Meeting Content**

Earl Johnson described his presentation as follows:

We went through ... decertification .... I ... believed that I was going to be terminated ... because I was a union officer.... [and] I wanted to ... alleviate th[is] fear .... [N]ow we [have] ... opportunity .... [and] a voice.

(Tr. 329-30). He denied that they promised increased wages and benefits. He denied telling employees to "read between the lines" or citing words to that effect. He indicated that he was asked at several meetings whether he received a raise and increased benefits after decertification, and acknowledged that he did. (Tr. 352-53). Brooks corroborated Johnson's account. Employee Steinway, who attended a single meeting, denied that promises were made.

**3. Analysis**

Although most meeting details are undisputed, a key point is disputed. On one hand, Leah Johnson stated that Brooks and Johnson said that although "the Company cannot make [express] promises .... if we just listen closely .... [and] read between the lines [...]. [Norcross will tell you what they will] offer, but legally ... cannot ... tell you [directly]." (Tr. 243-47). On the other hand, Earl Johnson and Brooks denied such commentary. For several reasons, I credit Leah Johnson. First, as noted, she had a stellar demeanor, and was open and cooperative. Second, her testimony was largely corroborated by the email that she sent to Huggins shortly after the meeting. Third, I found Earl Johnson and Brooks to have poor demeanors; they mostly appeared to be championing Westrock's cause.<sup>19</sup> Finally, it is plausible that Brooks and Earl Johnson, who openly supported decertification, have been rewarded with special travel perks and lack labor law expertise, overstepped in championing Westrock by telling everyone to "read between the lines" regarding the pros of decertification.

**I. April 4 Exchange Between Reed and Employee Brown**

On this date, Reed summoned Brown to his office. Brown testified that Reed had seen his Facebook post, which stated that Westrock's pro-decertification stance was based upon its own self-interest, and any plant closure rumors were a sham. See (GC Exh. 7). He said that, during the meeting, Reed asked him if he had a problem with the plant or him. (Tr. 180). He said that Reed then asked, "why I would ... say such a thing ... after the meeting," and that he

<sup>19</sup> I also note that critical pieces of their testimonies were procured via leading questions, which deeply undercut their overall credibility.

replied that he did not agree with what employees were saying. (Tr. 180). He said that Reed said that he got the post from another employee. On cross examination, when he was asked, whether “Randy [Reed had] ask[ed] ... anything about your union activities that you were trying to keep a secret that weren't already out in the open?,” he replied no. (Tr. 189).

Reed testified about this matter. He denied asking Brown about his Union activity. He solely contended that he inquired about the Facebook post.

## ***J. April 18 Meeting***

### **1. GC Witnesses**

Leah Johnson recalled HR Director Scott Pulice’s April 18 presentation to employees. She recalled him reading from a PowerPoint presentation entitled, “The Truth About Wages and Benefits.” (GC Exh. 6). This presentation: compared wages and benefits at Westrock’s plants; highlighted that non-union plants were paid higher wages; and repeatedly advised employees that the law prevents Westrock from making promises that wages or working conditions would improve after decertification.<sup>20</sup> Johnson recalled Pulice deviating from the script, and saying that:

[T]his is the meeting that your union does not want you to have. They don't want you to hear what I have to say. This is going to be a game-changer. I'm going to blow your mind. He said that two or three times from the very beginning.

(Tr. 61–62). She also recalled that:

That's when he started to show us the slide show ... [and] he went through each one, read it off. At the end, he talked about 401(k), and he did a little diagram on the board of the potential of the 401(k) if we had a certain percentage that was being matched by the Company ....

[H]e got a dry erase marker. He writes that number [on the dry erase board, i.e., a \$40,000 salary of a hypothetical employee at the plant]. He talked about that if we had a 401(k) match like many of their non-union plants at five, six percent that after so many years, a young person coming in who might be 25, 30 years old now at that company that over time, over say 20 plus years' service at the Company, this is how much they were going to have at the end. And I mean it was somewhere in the neighborhood of a million dollars....

I just know he talked about how ... you can be a millionaire by the time you're ready to retire. .... And [he asked] wouldn't that be great? How would that make you feel? I mean he put a lot of emotion into it.

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<sup>20</sup> This caveat appeared multiple times. (GC Exh. 6).

(Tr. 62-64).

Employee Brown testified that he attended a Pulice meeting. He recalled this exchange:

He had discussed a lot of things about our 401(k). The differences between union and non-union....

[B]asically [he] said that the guys at our plant were making \$2 less on the hour than what they are in the surrounding area.

(Tr. 183-84). On cross-examination, however, he agreed that “Westrock has not made any promises to employees about what they will get in the event that they choose to decertify.” (Tr. 216).

Employee Ford also attended another Pulice meeting; she recalled this exchange:

He was explaining the 401(k) and how it works. At places that don't have a union, they get a better 401(k) .... He was explaining how ... if you're in there and you get your ... two and a half percent dump at the end of the year plus the five percent that they match, ... eventually ... you could be a millionaire.

(Tr. 250).

## 2. Westrock’s Stance

Steinway recalled the April 18 Pulice meeting. She said that he read his slides verbatim. She recalled an example of him showing how much more the 401K match would be, if the plant used the non-union plan, but, recalled him saying that he could not make promises. It is notable that Pulice did not testify or deny his diatribe about “blowing” workers’ minds with the potential 401K plan that creates millionaires at its non-union facilities.

## III. ANALYSIS

### A. Agency Status of Brooks and Johnson<sup>21</sup>

Brooks and Johnson were Section 2(13) agents. The Board applies the common law rule of “apparent authority,” which gauges whether “under all the circumstances, the employees would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management.” *Eihorn Enterprises*, 279 NLRB 576 (1986), *enfd.* 843 F.2d 1507 (2d Cir. 1988); *United Scrap Metal Inc.*, 344 NLRB 467 (2005).

<sup>21</sup> These allegations are listed under complaint par. 5.

Several factors demonstrate agency herein. First, Westrock conferred “apparent authority” on Brooks and Johnson, when it flew them in from the Conway plant to the Chattanooga plant to meet with unit employees to discuss the potential terms and conditions of employment associated with decertification. Westrock scheduled and arranged their meetings, which occurred on plant property during working hours. Second, Westrock furthered their “apparent authority,” when it required them meet with legal counsel before their meetings,<sup>22</sup> and had Reed, *i.e.*, *its highest local official*, introduce them before each meeting. Third, Reed amplified their “apparent authority,” when he escorted them around the plant, personally introduced them to workers, and facilitated their individualized discussions about decertification. Under these circumstances, Unit employees reasonably believed that they were allied with, and spoke on behalf of, management regarding decertification matters. They were set up as employee authorities and dignitaries, who could substantiate Westrock’s ongoing claims that a post-decertification world would be an improvement and any misgivings to the contrary were misplaced. They were, thus, agents.

## **B. Section 8(a)(1) Allegations**

### **1. Disparate Enforcement of No-Solicitation Rule<sup>23</sup>**

Westrock violated the Act by disparately enforcing its no-solicitation in a way that granted Pike and Tucker the unfettered right to solicit for decertification during working time and in working areas, while not affording analogous access to those against decertification. Even if an employer's no-solicitation rule is facially lawful,<sup>24</sup> the disparate enforcement of a valid rule against union adherents violates the Act. See, e.g., *Shelby Memorial Home*, 305 NLRB 910, 919 (1991), *enfd.* 1 F.3d 550, 565 (7th Cir. 1993); *Stabilus, Inc.*, 355 NLRB 836, 839 (2010); *Nestle Co.*, 248 NLRB 732, 737 (1980), *affd.* mem. 659 F.2d 252 (D.C. Cir. 1981); *Marathon Letourneau Co.*, 256 NLRB 350, 357-358 (1981), *enfd.* 699 F.2d 248 (5th Cir. 1983).<sup>25</sup>

In the instant case, Westrock knowingly allowed pro-decertification employees Pike, Tucker, Earl Johnson and David Brooks to repeatedly violate two aspects of the no-solicitation rule (*i.e.*, soliciting during working hours and in working areas). Westrock failed, as noted, to afford pro-Union employees against decertification analogous solicitation rights.<sup>26</sup> Such disparate treatment was unlawful.

<sup>22</sup> Moreover, why would counsel need to tell them not to promise anything, if they were not agents?

<sup>23</sup> This allegation is listed under complaint pars.7 and 14.

<sup>24</sup> The GC has not alleged that the no-solicitation policy is facially invalid.

<sup>25</sup> See also *Synergy Gas Corp.*, 290 NLRB 1098, 1103 (1988) (one aberrant occurrence is not disparate treatment).

<sup>26</sup> As noted, there is no evidence that Union supporters were *knowingly* allowed by management to solicit during “working time” or in “working areas.” There is no evidence that Union supporters were allowed to end their shifts early and solicit during their remaining “working hours,” as Pike and Tucker did. There is no evidence that Union supporters were knowingly granted the right to solicit in “working areas,” as Pike, Tucker, Johnson and Brooks did. Finally, there is credible evidence that Westrock curtailed pro-Union solicitation,

## 2. Supervisor Smith's Comments<sup>27</sup>

Smith's exchange with Walker violated the Act. It is well settled that an employer violates the Act by "actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining representative." *Wire Products Mfg. Co.*, 326 NLRB 625, 640 (1998), enfd. sub nom. mem. *NLRB v R.T. Blankenship & Associates, Inc.*, 210 F.3d 375 (7th Cir. 2000). In determining whether aid is unlawful, the appropriate inquiry is "whether the Respondent's conduct constitutes more than ministerial aid." *Times Herald*, 253 NLRB 524 (1980). In making that inquiry, the Board considers the circumstances to determine whether "the preparation, circulation, and signing of the petition constituted the free and uncoerced act of the employees concerned." *Eastern States Optical Co.*, 275 NLRB 371, 372 (1985) (citing *KONO-TV-Mission Telecasting*, 163 NLRB 1005, 1006 (1967)); see also *Hall Industries*, 293 NLRB 785, 791 (1989), enfd. mem. 914 F.2d 244 (3d Cir. 1990) (actively assisting decertification effort "in the context of serious unfair labor practices").

Smith's directive to Walker to retrieve decertification cards from Pike and Tucker, and deliver the same to employees Lawrence and Murray, in order for her to later persuade them to sign such cards exceeded the ministerial aid threshold. Her directive amounted to the active promotion of a decertification petition by a supervisor, which occurred in tandem with the other serious unfair labor practices found herein. Her comments were, accordingly, unlawful.

## 3. Reed's Collection of Decertification Cards<sup>28</sup>

Reed's collection of Frost's decertification card for Pike violated Section 8(a)(1). His actions unlawfully supported the decertification petition, and exceeded the ministerial aid threshold. *Placke Toyota, Inc.*, 215 NLRB 395, 395 (1974); *Caterair International*, 309 NLRB 869 (1992) enfd. in relevant part and remanded 22 F.3d 1114 (D.C. Cir. 1994) (unlawful to allow managers to circulate decertification petition and solicit employees' signatures).

## 4. Improper Assistance Regarding RD Petition<sup>29</sup>

Westrock unlawfully aided the decertification petition. As noted, it unlawfully applied the no-solicitation rule in a manner favoring decertification; supervisor Smith directed an employee to deliver decertification cards to workers, whom she later intended to lobby to support decertification; and Reed collected decertification cards for deliverance to Pike. These actions vastly exceeded the ministerial assistance threshold and were, thus, unlawful.

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whenever it knew of such conduct.

<sup>27</sup> This allegation is listed under complaint pars. 8 and 14.

<sup>28</sup> This allegation is listed under complaint pars. 9 and 14.

<sup>29</sup> This allegation is listed under complaint pars.10 and 14.

*Yaohan U.S.A. Corp.*, 319 NLRB 424 (1995); *Placke Toyota*, *supra*.<sup>30</sup>

## 5. Reed's Comments<sup>31</sup>

### a. March 1 – Ford's Potential Wage Raise

Reed unlawfully said to Ford, in response to an inquiry from her supervisor about a raise that, "there's nothing [that] he can do ... until the contract goes through or the Union is out." (Tr. 239). The linking of her raise to the Union's deletion was unlawful. See, e.g., *Feldkamp Enterprises*, 323 NLRB 1193 (1997) (unlawful to tell an employee that employer might grant him a pay raise, but could not do so until the union organizing campaign was over); *Frank Leta Honda*, 321 NLRB 482 (1996).

### b. March 27 – Wage and Benefit Comments

Reed's statement that, "our non-union plants typically are paid better than union plants .... [and] I want to see you get out from under the union contract ... [and] see if you do better without a union here" was lawful. He essentially stated that Westrock's non-Union plants were paid higher wages and made no promises of future benefits, which was valid. See, e.g., *TCI Cablevision of Washington*, 329 NLRB 700, 700-01 (1999) (permissible to relate conditions of employment at unorganized facilities, as long as employer does not promise such benefits after decertification).

### c. March 27 – Comment to Bearden

Reed's comment to Bearden that his son accumulated \$19,000 in his 401K plan at Westrock's non-union Kimball plant was valid. As stated, an employer can lawfully inform unit employees of the benefits at unorganized plants, as long as it makes no promise that they will receive such benefits after decertification. *TCI Cablevision of Washington*, *supra*.

## 6. Meetings Involving Earl Johnson and David Brooks<sup>32</sup>

Agents Earl Johnson and Brooks unlawfully promised employees improved wages and benefits, if they decertified the Union. They told employees that, "there was a \$2 an hour pay increase ... at their plant once the Union was decertified.... [and] an increase in their 401(k) match .... [and that although] the Company cannot make promises .... **if we just listen closely** .... [and] **read between the lines** ... [the Company will say what they will] offer, but legally ... cannot ... tell you ...." (Tr. 56-57) (emphasis added). Their announcement "to read between the lines" promised that employee would receive a wage and 401K increase, if

<sup>30</sup> Although not the case herein, the Board will not find a violation, where the employer's conduct constitutes no more than "mere ministerial aid." *Consolidated Rebuilders, Inc.*, 171 NLRB 1415, 1417 (1968). An employer, as a result, may lawfully assist employees in the expression of their predetermined objectives or in the realization of an independently arrived at decision. *Washington Street Foundry*, 268 NLRB 338, 339 (1983).

<sup>31</sup> These allegations are listed under complaint pars.11, 12(a) and 14.

<sup>32</sup> These allegations are listed under complaint pars.12(b) and 14.



they decertified the Union, and was, thus, unlawful. See, e.g., *Equipment Trucking Co.*, 336 NLRB 277, 278 (2001) (promising wage increases and benefit changes if employees supported decertification; *Central Management Co.*, 314 NLRB at 767 (soliciting employees to sign a union disaffection petition in exchange for guaranteed wages and benefits); *Fabric Warehouse*, 294 NLRB 189, 192 (1989).

## 7. April 18 meeting with Pulice<sup>33</sup>

Pulice's April 18 comments were unlawful. He presented a slideshow, which demonstrated that that Westrock's non-Union workers received better wages and 401K offerings than unit employees and repeatedly stated that Westrock was not promising anything to workers dozens of times. Although such comments would generally be lawful when taken in isolation (see, e.g., *TCI Cablevision of Washington*, supra), these comments rose to the level of unlawful promises, when considered in the context of Earl Johnson's and Brooks' warning to "listen closely .... [and] read between the lines" regarding the improved wages and benefits that Westrock will offer after decertification. Pulice's "blow your minds" meeting occurred less than 2 weeks after Earl Johnson and Brooks told workers "to read between the lines," and really amounted to, an although we cannot tell you directly what you'll get, here it is on a silver platter, "wink, wink, nudge, nudge."<sup>34</sup> In addition, how could this meeting be a genuine "game changer" as Pulice stated, unless he was offering a tangible promise?<sup>35</sup> Under the totality of the circumstances, Pulice's comments amounted to a promise of increased wages and benefits. *Equipment Trucking Co.*, supra; *Central Management Co.*, supra. These circumstances rendered Westrock's repeated claims that it was not promising anything virtually meaningless.

## 8. Reed - Interrogation<sup>36</sup>

Reed did not unlawfully interrogate Brown. In *Westwood Healthcare Center*, 330 NLRB 935 (2000), the Board held that these factors determine an unlawful interrogation: (1) background (i.e. is there a history of hostility and discrimination?); (2) nature of the information sought (e.g., did the interrogator seek information on which to base disciplinary action?); (3) identity of the questioner (i.e., how high was he in the hierarchy?); (4) the place and method of interrogation (e.g. was the employee called from work to the boss's office?); and (5) truthfulness of the reply. *Id.* at 939. In applying these factors, the Board has held that:

In the final analysis, our task is to determine whether ... the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section

<sup>33</sup> These allegations are listed under complaint pars.12(c) and 14.

<sup>34</sup> "Wink wink nudge nudge" followed by "say no more, say no more," is a statement popularized by Eric Idle from Monty Python of the 1970s. The winks and nudges are verbal explications of gestures people make, when they want to pass on something sly. See <https://www.urbandictionary.com>.

<sup>35</sup> It follows that an illusory offer would not be described as a "game changer" or "mind blower."

<sup>36</sup> These allegations are listed under complaint pars.13 and 14.

7 of the Act.

Id. at page 940.

5 In the instant case, Reed summoned Brown to his office, asked him about his pro-  
Union Facebook post and asked whether he had a problem with his management style.  
Brown candidly replied that he did not have a problem, added that he only wanted to address  
false comments and agreed, during cross, that his Union activities were open. Under these  
10 circumstances, Reed's questioning was valid, given that there is no evidence that Westrock  
disciplined Union supporters; there is no evidence that it intended to discipline Brown;  
Brown's replies were truthful and he was not intimidated; and Brown's Union activities were  
open.

### CONCLUSIONS OF LAW

15 1. Westrock is an employer engaged in commerce within the meaning of Section  
2(2), (6), and (7) of the Act.

20 2. The Union is a labor organization within the meaning of Section 2(5) of the  
Act.

3. Earl Johnson and David Brooks were Section 2(13) agents.

25 4. Westrock violated Section 8(a)(1) by:  
a. Disparately enforcing its no-solicitation policy in support  
decertification.

30 b. Soliciting employees to deliver decertification cards to coworkers.

c. Telling employees that it would lobby employees who have received  
decertification cards to support decertification.

35 d. Collecting signed decertification cards from employees.

e. Providing more than ministerial aid to employees in obtaining the  
requisite showing of interest for decertification.

40 f. Telling employees that a raise could not be granted, unless the Union  
was decertified.

g. Promising employees improved wages and benefits, if they supported  
decertification.

45 5. The unfair labor practices set forth above affect commerce within the meaning

of Section 2(6) and (7) of the Act.

### REMEDY

5 Having found that Westrock committed unfair labor practices, it is ordered to cease and desist and to take certain affirmative action designed to effectuate the Act's policies. It shall post the attached notice in accord with *J. Picini Flooring*, 356 NLRB 11 (2010).

10 On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended<sup>37</sup>

### ORDER

15 Westrock, its officers, agents, successors, and assigns, shall

1. Cease and desist from

20 a. Disparately enforcing its no-solicitation policy in support decertification.

b. Soliciting employees to deliver decertification cards to coworkers.

25 c. Telling employees that it would lobby employees who have received such decertification cards to support decertification.

d. Collecting signed decertification cards from employees.

30 e. Providing more than ministerial aid to employees in obtaining the requisite showing of interest for decertification.

f. Telling employees that a raise could not be granted, unless the Union was decertified.

35 g. Promising employees improved wages and benefits, if they supported decertification.

2. Take the following affirmative action necessary to effectuate the policies of the Act

40 a. Within 14 days after service by Region 10, post at its Chattanooga,

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<sup>37</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.


Tennessee plant copies of the attached notice marked "Appendix."<sup>38</sup> Copies of the notice, on forms provided by the Regional Director, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted.

5 In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these  
10 proceedings, it shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by it at any time since February 1, 2017.

b. Within 21 days after service by the Region, file with the Regional  
15 Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

Dated Washington, D.C. August 6, 2018

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Robert A. Ringler  
Administrative Law Judge

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<sup>38</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

**WE WILL NOT** disparately enforce our no-solicitation policy in order to favor decertification.

**WE WILL NOT** solicit employees to deliver decertification cards to their coworkers.

**WE WILL NOT** tell employees that we will lobby employees who have received such decertification cards to support decertification.

**WE WILL NOT** collect signed decertification cards from employees.

**WE WILL NOT** provide more than ministerial aid to employees in obtaining the requisite showing of interest in support of decertification

**WE WILL NOT** tell you that a raise cannot be granted, unless the Union is decertified.

**WE WILL NOT** promise employees improved wages and benefits, if they support decertification.

WESTROCK SERVICES, INC.

\_\_\_\_\_  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

Harris Tower, 233 Peachtree Street N.E., Suite 1000, Atlanta, GA 30303-1531  
(404) 331-2896, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at <https://www.nlr.gov/case/10-CA-195617> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E. Washington D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (205) 518.7517.